IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: AFTERMARKET FILTERS ANTITRUST LITIGATION	Master Docket No.: 08-cv-4883 MDL Docket No.: 1957
This Document Relates to: All Actions	Judge Robert W. Gettleman Magistrate Geraldine Soat Brown

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR LEAVE TO CONDUCT THE DEPOSITIONS OF FOUR CHAMPION LABORATORIES INC, EMPLOYEES

Champion's opposition to Plaintiffs' efforts to depose Mike Boyer, Lowell Cockrum, Art Demers and Scott Lewis is not surprising. Understandably, Champion would rather focus on any number of issues besides the damning evidence implicating it as the ring-leader in a multi-billion dollar price-fixing conspiracy.

Champion's response to Plaintiffs' motion is inaccurate, both as to the showing Plaintiffs have made with respect to the four disputed witnesses, and as to the case law. With respect to the latter, *Archer Daniels Midland Co. v. AON Risk Services, Inc.*, 187 F.R.D. 578 (D. Minn. 1999 ("*ADM*") – the sole case invoked by Defendants – is telling in multiple respects. First, *ADM* involved a single plaintiff and single defendant in a $50 million dollar dispute over insurance coverage. Here, there are five groups of plaintiffs and seven defendants in a multi-billion dollar conspiracy case that spans nine years. Second, even in *ADM*, AON (which sought leave of the court to take additional depositions) was permitted 20 depositions of ADM witnesses – five *more* than all Plaintiffs are seeking of Champion. Third, of the additional deponents requested by AON in *ADM*, a number had already been deposed in a prior ADM lawsuit dealing

with the same insurance coverage issue. Here, none of the deponents being pursued by Plaintiffs has testified on the disputed issues in this case – perhaps because Champion [redacted] to settle the employment litigation before any of its employees could be deposed.

With respect to Plaintiffs' showing of need to depose Boyer, Cockrum, Demers and Lewis – this is not a close call. Champion preposterously suggests that Boyer, Bill Burch's direct supervisor for his last year of employment at Champion – including at the time of his termination – is not an appropriate deponent. Amazingly, Champion would deprive Plaintiffs the opportunity to examine a witness who Burch has explained, under oath, threatened the safety of his family because of the price-fixing allegations made in his lawsuit. Undoubtedly, Champion would prefer to impugn the integrity and credibility of Mr. Burch without having to address the compromising and potentially criminal conduct of its own employees.

Lowell Cockrum had a front-row seat to the price-fixing activities at Champion. Champion gamely characterizes Cockrum's knowledge as limited to "legitimate business discussions," which Plaintiffs fully expect to be a mantra from Defendants as the case proceeds – as it is from all price-fixing defendants, even those who end up in jail. *See, e.g., In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 661 & 664 (7th Cir. 2002) (counsel argued that the HFCS industry was "fiercely competitive" notwithstanding their executives' imprisonment for price-fixing a related product and invocation of the Fifth Amendment when questioned about HFCS price-fixing) (Posner, J.). In this case, Mr. Burch recorded a conversation with Ty Nilsson in which Nilsson describes Champion's plan to coordinate a price increase with competitors at a Filters Manufacturers' Council meeting that occurred in late September 2004. On September 29, 2004, Nilsson sent Cockrum an email confirming that he

had these discussions with his competitors. Cockrum is the only recipient (currently known to Plaintiffs) of this email. Again, we understand that Champion would rather keep such "legitimate business discussions" away from the Court and the jury. But they should not be afforded this protection.

With respect to Art Demers, Champion argues that it is entitled to tell the State of Florida how best to prosecute its case. The lone witness identified to date with specific and first-hand experience related to Florida purchases is Art Demers. Champion's refusal to produce him as a witness is suspicious and should not be allowed.

Scott Lewis was an executive at the two ring-leading conspirators at the key times of the conspiracy. No individual – other than Mr. Burch – is similarly situated. And Lewis was not merely present at Champion; he was an executive in regular contact with John Evans. Lewis contemporaneously observed or participated in numerous communications that will likely be an area of focus in this litigation. Again, not surprisingly, Champion would rather that Plaintiffs not have access to such a uniquely situated witness. Moreover, that Defendants may put forth a Rule 30(b)(6) witness to address certain topics of interest to Plaintiffs, does not lessen the import of the testimony that Lewis can offer as an experienced operations executive with knowledge gained from first-hand experience at two of the largest light duty Filters manufacturers in the world.

Accordingly, Plaintiffs respectfully request that their petition for leave to depose Mike Boyer, Lowell Cockrum, Art Demers and Scott Lewis be granted.

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Respectfully submitted,

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